

REMARKS**1. Drawings.**

Applicant has attached a substitute FIG. 6 showing "axis A". No new matter has been added as this feature is disclosed in the Specification as originally filed. A version marked "Replacement Sheet" and a version marked "Marked-Up Version" are enclosed.

2. Specification Objections.

The Examiner has objected to the Specification on the allegation that the Specification does not contain the term "feed water inlet". While a specification need not contain every word in the claims, Applicant has substituted the term "aperture" for the term "feed water inlet" in the claims, which is the word used in the Specification having identification number "48". No new matter has been added.

The Examiner has objected to the term "attachment means" as inconsistently used in Claim 20. Applicant has canceled Claim 20.

The Examiner has objected to the Specification on the allegation that the Specification does not contain the term "internal structure". Specifically, "internal structure" refers to the elements within the handle. As now used, the term "internal structure" of a component is consistent with the Specification.

The issues remaining issues with regard to the specification raised by the Examiner on page 3 of the Office Action were addressed Applicant in the response dated 19 April 2005.

3. Claim Amendments.

Throughout the claims, Applicant has substitute the term "waterfall handle" in place of "device for attaching to and producing an artificial waterfall in an artificial water structure" to render the claims neater in appearance. This substitution does not change the scope of the claim as the terms are identical in scope. No new matter has been added.

The Claims also have been reviewed and amended to more accurately claim the present invention. No new matter has been added any of these amendments.

New independent Claim 34 is a more concise claim for the basic structure of the invention. New Claims 35-40 depend from new Claim 34. Each of these new claims is supported by the original Specification and no new matter has been added.

New independent Claim 41 is similar to new Claim 34, but includes a requirement that the handle portion is cylindrical. New Claims 42-46 are identical to new Claims 35-39, but depend ultimately from new Claim 41. Each of these new claims is supported by the original Specification and no new matter has been added.

4. 35 USC 102 Rejections.

Claims 1-3, 5, 6, 17, 19-23 and 25-30 have been rejected under 35 USC 102(b) as being anticipated by Johnson '179, Chartier '696, and Gable '941. Applicant traverses this rejection. Initially, as claims 16-33 have been canceled, any rejection to these claims is now moot.

In order to properly anticipate Applicant's invention, as claimed, under 35 USC §102, each and every element of the claim in issue must be found, "either expressly or inherently described, in a single prior art reference." *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986); *see also verdegall Bros. V. Union Oil Co. of California*, 814 F2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The absence of one element in the claim in issue from the cited prior reference negates anticipation. *See Atlas Powder Co. v. E.I. du Pont de Nemours & Co.*, 224 USPQ2d 409 (Fed Cir. 1984). Anticipation was intended to apply in this limited situation in which one prior art reference incorporates *all* of the elements of a claim in a subsequent invention because the nonobvious standard was intended to cover broader obvious leaps from a reference to a claim or from combined references to a claim. *See Titanium Metals Corp. v. Brenner*, 227 USPQ 773 (Fed. Cir. 1985).

Applicant submits that Johnson '179, Chartier '696, and Gable '941 do not disclose Applicant's invention as claimed in Claims 1, 9 or any claim dependant therefrom (and, as an aside, do not disclose new Claims 34-46). At a minimum, none of these patents discloses a waterfall handle having an elongated member with the internal structure as claimed or having an elongated member within two ends as claimed. Further, none of the prior discloses a waterfall handle in which the elongated

member is capable of rotating within the ends. As such the references cannot anticipate the invention as claimed herein.

Referring now the references individually, Johnson '179 fails to disclose a waterfall handle having an elongated member with the internal structure as claimed or having an elongated member within two ends as claimed. The internal structure of the device in Johnson '179 is not structured to allow water to flow into the first chamber from a first cooperating end of the elongated member. Further, the housing (32) in Johnson '179 is not spaced at a distance sufficient from the water structure to be grasped by a human hand. Further, Johnson '179 does not disclose a waterfall handle with an elongated member that is rotatable with the ends. See Claim 9. As Johnson '179 does not disclose each and every element of Claims 1, 9, or any claim dependant therefrom, Johnson '179 cannot and does not anticipate Applicant's invention.

Chartier '696 fails to disclose a waterfall handle with an elongated member with the internal structure as claimed or having an elongated member within two ends as claimed. For example, Chartier '696 fails to disclose an elongated member in which two chambers are separated by a divider yet are in fluid connection with each other. Further, the device in Chartier '696 is adapted to fit into and form part of the pool structure in a stationary manner (non-rotatable). Chartier '696, col. 1, lines 56-57. As such, Chartier '696 cannot and does not anticipate Applicant's invention.

Gable '941 fails at a minimum to disclose a waterfall handle with an elongated member with the internal structure as claimed. In fact, as claimed in Gable '941, the elongated member comprises the chambers and the divider. However, such an arrangement having downstream or upstream chambers in a faucet type structure does not anticipate a waterfall handle with, at a minimum, an elongated member and end pieces. See *In re Bond*, 910 F2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) (The elements must be arranged as required by the claim). Further, Gable '941 does not disclose a waterfall handle in which the elongated member is held a distance from the surface to which the device is attached by the end pieces. As such, Gable '941 cannot and does not anticipate Applicant's invention.

4. 35 USC 103 Rejections.

Claims 1-3, 5, 6, 17, 19-23 and 25-30 have been rejected under 35 USC 103 as being unpatentable over Johnson '179 in view of Bishop '154, over Chartier'696 in view of Bishop '154, and over Gable '941 in view of Kohler '018. Initially, as claims 16-33 have been canceled, any rejection to these claims is now moot. Applicant traverses these rejections.

For a claim to be determined obvious (or nonobvious) under 35 USC 103, the claimed material must have been obvious to person of ordinary skill in the art from the prior art. An obviousness determination requires examining (1) the scope of the prior art, (2) the level of skill in the art, and (3) the differences between the prior art and Applicant's invention. *Litton Systems, Inc. v. Honeywell, Inc.*, 117 SCt 1270 (1970). A mere suggestion to further experiment with disclosed principles would not render obvious an invention based on those principles. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 19 USPQ2d 1432 (Fed. Cir. 1991). In fact, an applicant may use a reference as his basis for further experimentation and to create his invention. *Id.*

The fact that each element in a claimed invention is old or unpatentable does not determine the nonobviousness of the claimed invention as a whole. *See Custom Accessories, Inc., v. Jeffrey-Allan Industries*, 1 USPQ2d 1196 1986 (Fed. Cir. 1986). The prior art must not be given an overly broad reading, but should be read in the context of the patent specifications and *as intended by reference authors*. *Durling v. Spectrum Furniture Co.*, 40 USPQ2d 1788 (Fed Cir 1996) (Federal Circuit held that district court erred by giving a "too broad an interpretation" of claims in a sofa patent to invalidate another on the nonobviousness standard).

The Federal Circuit has made it clear that the nonobviousness standard is applied wrongly if a court or an examiner: (1) improperly focuses on "a combination of old elements" rather than the invention as a whole; (2) ignores objective evidence of nonobviousness; (3) pays lip service to the presumption of validity; and (4) fails to make sufficient *Graham* findings. *Custom Accessories, Inc.*, 1 USPQ2d 1196 (Fed. Cir. 1986). Applying the nonobviousness test counter to these principles counters the principle that a patent application is presumed nonobvious. *Id.* To establish a *prima*

facie case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

This invention is not obvious over Johnson '179 in view of Bishop '154, over Chartier '696 in view of Bishop '154, or over Gable '941 in view of Kohler '018.

A. Claims 1-3, 5, 6, 17, 19-23 and 25-30 are not obvious under 35 USC 103 by Johnson '179 in view of Bishop '154.

Johnson '179 in view of Bishop '154 does not teach Applicant's invention as claimed in Claims 1-3, 5, 6, 17, 19-23 and 25-33. While Johnson '179 teaches a sheet style waterfall fixture and Bishop '154 teaches a swimming pool water circulation system with water outlets, the combination does not suggest a waterfall handle with the limitation of the instant claims. While the Johnson '179 and Bishop '154 systems could be combined, this combination in general and Bishop '154 in specific does not render obvious the structure of Applicant's invention. In fact, Bishop '154 adds nothing but a source of water that could be used with Applicant's invention and any invention requiring a swimming pool water circulation system. While the examiner is correct in that inlets may be "finger holds", this is inconsequential with respect to the waterfall handle, particularly its structure, as disclosed and claimed by Applicant¹.

In any event, as Johnson '154 does not disclose Applicant's invention and as Bishop '154 is nothing more than a water source, this obviousness rejection is inappropriate. As such, Applicant requests that the examiner withdraw this rejection.

B. Claims 1-3, 5, 6, 9-15, 17, and 19-30 are not obvious under 35 USC 103 by Chartier '696 in view of Bishop '154.

Chartier '696 in view of Bishop '154 does not teach Applicant's invention as claimed in Claims 1-3, 5, 6, 17, 19-23 and 25-33. Similar to above, while Chartier '696 teaches an apparatus for producing a sheet waterfall and Bishop '154 teaches a swimming pool water circulation system, the combination does not suggest a waterfall handle with the limitation of the instant claims. While the Chartier '696 and Bishop '154

¹ If the examiner continues to reject any of the claims based on this combination of art, Applicant requests that the examiner provide additional explanation as to what Bishop '154 adds to Johnson '179.

systems could be combined, this combination in general and Bishop '154 in specific also does not render obvious the structure of Applicant's invention. Further, Bishop '154 does not add anything relevant to Chartier '696 that would render obvious the structure of Applicant's invention. In fact, Bishop '154 adds nothing but a source of water that could be used with Applicant's invention and any invention requiring a swimming pool water circulation system. Further, Bishop '154 only discloses that the direction of a conduit may be rotated to change the direction of a stream of water. Specifically, at most Bishop '154 has disclosed that the inlets may be moved up to create a fountain at the periphery of a pool. However, nothing in Chartier '696 or Bishop '154 suggests a waterfall handle with the internal structure as claimed or with a rotatable elongated member.

As such, Applicant maintains that the rejection based on Chartier '696 in view of Bishop '154 is inappropriate and requests that the examiner withdraw this rejection.

C. Claims 1-3, 5, 6, 17, 19-23 and 25-32 are not obvious under 35 USC 103 by Gable '941 in view of Kohler '018.

Gable '941 in view of Kohler '018 does not teach Applicant invention as claimed in Claims 1-3, 5, 6, 17, 19-23 and 25-33. While Gable '941 teaches a faucet and Kohler '018 teaches a double-bell supply, the combination does not suggest a waterfall handle with the limitation of the instant claims. The combination of a bathroom faucet and a double-bell supply is completely distinct and teaches away from Applicant's invention, as most pools and spas contain a single source for water and Applicant's invention is towards the novel structure of its waterfall handle. A double-bell supply is simply a device to combine two kinds of water. As Gable '941 is a completely distinct device, , this combination of references does not teach Applicant's invention.

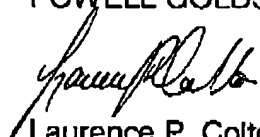
As such, Applicant maintains that the rejection based on Gable '941 in view of Kohler '018 is inappropriate and requests that the examiner withdraw this rejection.

CONCLUSION

Applicant has made clarifying amendments to the claims of this patent application for use in the request for continued examination (RCE). Applicant submits that the patent application and the claims are in condition for allowance and requests such action. If the examiner has any final questions or concerns prior to allowance, please have the examiner contact the below signed attorney of record.

Please direct all future correspondence to the attorney of record's new address shown below. A general change of correspondence address has been submitted for the attorney of record based on the Customer Number.

Respectfully submitted,
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